

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JAIPUR BENCH, JAIPUR.

**O R D E R**

**Branch Manager, UCO Bank**

**Vs.**

**Shiv Prasad Sharma & anr.**

**S.B.CRIMINAL MISC.PETITION NO.1392/2006**

**Under Section 482 Cr.P.C.**

\*\*\*\*\*

Date of Order:-

**14/11/2006.**

P R E S E N T

**HON'BLE MR.JUSTICE HARBANS LAL**

Mr. Saransh Saini on behalf of  
Mr. G.K. Garg for the petitioner.  
Mr. Arun Sharma P.P. for the State.

\*\*\*\*\*

**BY THE COURT:-**

The instant petition u/S.482 Cr.P.C. is directed against the judgment dated 26/4/2006 passed by the learned Special Judge, Special Court (Prevention of Sati), Rajasthan-cum-Additional Sessions Judge, Jaipur whereby the appeal preferred by the petitioner, Branch Manager, UCO Bank, has been allowed and the judgment of the learned trial court dated 4/3/2005 has been set-aside with a further direction to decide the case afresh as per the provisions of Section 29 of the Industrial Disputes Act, 1947 (in short, "the Act").

**2)** The relevant facts giving rise to this petition and necessary for its disposal are that non-petitioner Shiv Prasad Sharma was appointed as a Class-IV employee on 12/3/1991 who was removed from service on 1/10/1991 without following due procedure and without affording him any opportunity of hearing. He filed S.B. Civil Writ Petition

No.354/1992 which was allowed and the order terminating his services was set-aside. He was directed to be reinstated in service. After complying with the judgment of this Court, the services of non-petitioner were dispensed with on 6/5/1994 whereupon he initiated proceedings u/S.33C (2) of the Act before the C.G.I.T.-cum-Labour Court. The application of the non-petitioner was allowed on 27/2/1997. The writ petition filed by the bank against the aforesaid order came to be dismissed by the learned Single Judge of this Court on 4/8/1997. The Central Government made a reference to the C.G.I.T.-cum-Labour Court Jaipur wherein the non-petitioner filed a statement of claim. The Tribunal passed the award in favour of the non-petitioner on 27/12/1999 directing continuity of his services and back wages. The bank again challenged the aforesaid award before this Court by filing S.B. Civil Writ Petition No.4991/2000 which was dismissed on 8/5/2006. During the pendency of the aforesaid writ petition, prosecution was initiated u/S.29 of the Act. The trial court convicted the Branch Manager UCO Bank, Dausa on 4/1/2002. The appeal preferred by the bank/Branch Manager UCO Bank Dausa came to be dismissed on 20/4/2002 by the appellate court whereupon the bank preferred a criminal revision petition before this Court which is said to be still pending. The non-petitioner again filed an application on 18/10/2002 for compliance of the order dated 4/1/2002. The trial court passed an order of warrant/attachment of properties of the bank on 22/10/2002 and the application filed by the bank for cancellation of attachment order was dismissed on 20/11/2002. The bank thereafter filed a criminal revision petition before the Court of

Session, Jaipur City, Jaipur on 22/11/2002 which was allowed on 3/3/2003 and the matter was remanded back to the trial court. The trial court again passed an order of conviction on 25/4/2003. The non-petitioner was reinstated in service by the bank and he joined his duties on 27/9/2003. The appeal preferred by the bank against the order of conviction dated 25/4/2003 was allowed on 1/5/2004 by the learned Additional Sessions Judge, Jaipur City, Jaipur and the order of conviction was set-aside and the case was remanded to the trial court. The trial court rejected the application filed by the non-petitioner on 4/3/2005 but the appeal filed by him before the learned Additional Sessions Judge, Jaipur City, Jaipur came to be allowed setting aside the order dated 4/3/2005. Hence, the petitioner-bank has invoked the inherent jurisdiction of this Court u/S.482 Cr.P.C.

**3)** Learned counsel for the petitioner has reiterated the contentions raised before the learned court below. It is contended that no fresh complaint for offence u/S.29 of the Act could be filed and tried after the decision of the first complaint especially when award passed in his favour had already been complied with and implemented. It is contended on behalf of the non-petitioner that the offence in question is a continuing offence in as much as, a fine of Rs.200/- per day is provided for non-compliance/non-implementation of the award. It is submitted that the learned court below has rightly set-aside the order of the trial court rejecting the complaint.

**4)** I have anxiously considered the rival submissions made at the bar and have perused the relevant record as well as the authority in the case

of **Banaras Ice Factory Ltd. Vs. The U.P. Government : AIR 1956 All 730.**

Section 29 of the Act reads as under:-

"Any person who commits a breach of any term of any settlement or award, which is binding on him under this Act, shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both, and where the breach is a continuing one, with a further fine which may extend to two hundred rupees for every day during which the breach continues after the conviction for the first and the court trying the offence, if it fines the offender, may direct that the whole or any part of the fine realized from him shall be paid, by way of compensation, to any person who, in its opinion, has been injured by such breach."

5) It has been held in **Banaras Ice Factory Ltd. (supra)** that the order of reinstatement in service of a dismissed employee is one of a continuing nature, but the obligation to pay a sum of money is not continuing. The first part of the award in the instant case which pertains to reinstatement of the non-petitioner has already been complied and the second part of the award which pertains to payment of fine of Rs.95,200/- for the period w.e.f. 4/1/2002 to 25/4/2003 has not been complied with which part of the award being not continuing, the amount of fine may be recovered as per law. No authority taking a contrary view or a view different from the one taken in the aforesaid authority has been cited on behalf of the non-petitioner. In view of the law laid down in the aforesaid authority the second prosecution cannot be resorted to only on the

ground of non-payment of the aforesaid amount treating it to be breach of award and the order dated 26/4/2006 is, therefore, unsustainable in law and deserves to be set-aside as it tantamounts to abuse of the process of the court.

Consequently, this petition u/S.482 Cr.P.C. is allowed and the judgment and order dated 26/4/2006 passed by the learned Special Judge, Special Court (Prevention of Sati), Rajasthan-cum-Additional Sessions Judge, Jaipur is hereby set-aside.

(HARBANS LAL), J.

anil